

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 122

Introduced by Assembly Member Rendon

January 14, 2013

An act to add Chapter 13 (commencing with Section 25987.1) to Division 15 of the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 122, as amended, Rendon. ~~Energy: energy assessment: nonresidential buildings: Energy improvements:~~ financing.

Existing law requires the State Energy Resources Conservation and Development Commission to implement a program to provide financial assistance for energy efficiency projects.

This bill would enact the Nonresidential ~~Building~~ *Real Property* Energy Retrofit Financing Act of ~~2013~~ *2014* and would require the commission to establish the Nonresidential ~~Building~~ *Real Property* Energy Retrofit Financing Program and to develop a request for proposal for a 3rd-party administrator by July 1, 2014, to develop and operate the Program. The program ~~to would~~ provide financial assistance, through authorizing the issuance of, among other things, revenue bonds, to owners of eligible ~~nonresidential buildings~~ *real properties, as defined*, for implementing energy improvements for their properties. The bill

would require that the bonds be secured by the recording of an energy remittance repayment agreement lien, as defined, on the ~~deed of the property~~ *eligible real property* for which the improvements are performed. The bill would require ~~the State Board of Equalization a loan servicer~~ to collect installment payments from owners of eligible *real properties* whose applications have been approved by the commission. ~~The bill would require the commission, within 6 months after the first 2 years of implementation of the program or after the expenditure of the first \$250,000,000 of the proceeds derived by issuance of the revenue bonds, whichever is earlier, to prepare and make publicly available a report on the efficacy of the program in achieving the purposes of the program and recommendations that would enhance the ability of the program to achieve those purposes. The bill would prohibit the commission from additional expenditure of the proceeds until the commission holds at least one public hearing and take public comments on the report. The bill would require the State Board of Equalization to collect repayment installments that are delinquent.~~

~~The bill would require the commission to meet for the purpose of approving applicants to participate in the program.~~ The bill would authorize the California Alternative Energy and Advanced Transportation Financing Authority, on behalf of the commission, to issue and renew the negotiable revenue bonds to generate moneys to finance energy improvements for approved applicants.

The bill would establish the Nonresidential ~~Building~~ *Real Property* Energy Retrofit Debt Servicing Fund in the State Treasury and the Loan Loss Reserve Account and Administration Account within the fund. The bill would require ~~the State Board of Equalization~~ *commission* to deposit the installment payment received from the owners of eligible ~~buildings~~ *real properties* into the fund and certain fees collected into the specified accounts. The bill would continuously appropriate the moneys in the fund and the accounts to repay the principal and interest on the bonds, and to cover the administrative costs incurred by the authority, the commission, and the State Board of Equalization, thereby making an appropriation.

The bill would require the Director of Finance to transfer, as a loan, ~~up to \$1,000,000, to the authority, and up to \$7,000,000, to the commission, from the General Fund for the purposes of implementing the program. The bill would require the loans to be repaid on or before January 1, 2024.~~

Existing law establishes incentives in the form of grants and loans to low-income residents, small businesses, and residential property owners for constructing and retrofitting buildings to be more energy efficient.

The bill would require the State Energy Resources Conservation and Development Commission, to the extent it determines necessary to effectively complete its duties under the act, to analyze and evaluate specified standards developed for nonresidential energy building retrofits.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 13 (commencing with Section 25987.1) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 13. NONRESIDENTIAL-BUILDING ASSESSMENT *REAL PROPERTY ENERGY RETROFIT* FINANCING

Article 1. General Provisions and Definitions

25987.1. This act shall be known, and may be cited, as the Nonresidential-Building *Real Property* Energy Retrofit Financing Act of 2013; 2014.

25987.2. The purpose of this chapter is to facilitate private financing to enable private nonresidential-building *real property* owners and eligible public entities to invest in clean energy improvements, renewable energy, and conservation; to incentivize private equity managers to invest in clean energy improvements, integrate the smart energy economy, and stimulate the state economy by directly creating jobs for contractors and other persons who complete new energy improvements; and to reinforce the leadership role of the state in the new energy economy, thereby attracting energy manufacturing facilities and related jobs to the state.

25987.3. The Legislature finds and declares all of the following:

(a) Nonresidential-buildings *real properties* represent a huge opportunity to significantly increase energy efficiency and reduce greenhouse gas emissions. To do this, California needs to address the design, construction, and operation of these buildings.

(b) Investment in building performance upgrades is an intelligent business decision. Building performance upgrades lower operating costs, improve occupant comfort, hedge against utility price increases, demonstrate commitment to tenant well-being, reduce exposure to regulation, help the environment, and ultimately boost property values.

(c) It is in the best interest of the state and its citizens to enable and encourage the owners of eligible nonresidential *real* property to invest in new energy improvements, including building energy efficiency improvements that qualify for investor-owned utility or publicly owned utility programs, water efficiency improvements, and renewable energy improvements, by enacting this division to establish, develop, finance, implement, and administer a new energy improvement program that provides for both building energy efficiency improvements and renewable energy improvements and to assist those owners who choose to participate in the program to complete new energy improvements to their properties because of the following:

(1) New energy improvements, including building energy efficiency improvements and renewable energy improvements, can provide positive cashflow when the costs of the improvements are spread out over a long enough time that a building's cumulative utility bill cost savings exceed the amount of the liens recorded on the eligible building to ensure payment for the improvements.

(2) Many owners of eligible nonresidential ~~buildings~~ *real properties* are unable to fund a new energy improvement because the owners do not have sufficient liquid assets to directly fund the improvement or are unable or unwilling to incur the negative net cashflow likely to result if the owner uses a typical existing loan program to fund the improvement.

(d) Reduction in the amount of emissions of greenhouse gases and environmental pollutants, resulting from increased efficiencies and the resulting decreased use of traditional nonrenewable fuels, will improve air quality and may help to mitigate climate change.

(e) ~~The nonresidential building owners of nonresidential real properties who participate in the program established pursuant to this division to assist them in completing new energy improvements, including building energy efficiency improvements and renewable energy improvements, to the building shall do so voluntarily.~~

25987.4. Unless the context otherwise requires, for the purposes of this chapter, the following terms have the following meanings:

(a) (1) ~~“Alternative sources of energy” or “alternative~~
“*Alternative* energy sources” means energy from renewable cogeneration or gas-fired cogeneration technology that meets the greenhouse gas emissions and efficiency standards applicable to the Self-Generation Incentive Program in effect at the time of the application, energy storage technologies, or energy from solar, biomass, wind, or geothermal systems, or fuel cells, the efficient use of which will reduce the use of conventional energy fuels.

(2) The system shall be sized appropriately to offset part or all of the applicant’s own energy demand for the permanent fixtures that consume energy, as if all cost-effective energy efficiency measures have been installed, and shall be located on the same property where the ~~applicant’s own energy demand~~ *eligible real property* is located.

(b) “Applicant” means a person, or an entity or group of entities, engaged in business or operations in the state, whether organized for profit or not for profit that owns a nonresidential ~~building~~ *real property* and applies for financial assistance from the commission for the purpose of implementing a project in a manner prescribed by the commission.

(c) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004.

(d) “Board” means the State Board of Equalization.

(e) “Building energy efficiency improvement” means one or more installations or modifications that are permanently affixed to the building or located on the premises of the building site, for which a building permit is issued after January 1, ~~2014~~, 2015, to an eligible building that either qualifies for an investor-owned utility or publicly owned utility energy efficiency program or is designed to reduce the energy consumption of the building, and that may include, but is not limited to, all of the following to the extent they qualify:

(1) High-efficiency mechanical equipment.

(2) High-efficiency electrical equipment.

(3) Capturing or reducing heat gain or solar shading, including the roof and south and west walls, and not just glazing.

(4) High-efficiency water heating.

(5) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems.

(6) Fenestration and door replacements, and door modifications that reduce energy consumption.

(7) Automatic energy control systems.

(8) Heating, ventilating, or air conditioning and distribution system modifications or replacements.

(9) Caulking and weather stripping.

(10) Replacement or modification of luminaries to increase the energy efficiency of the system, or additional lighting controls to reduce electric lighting during periods of vacancy.

(11) Energy recovery systems.

(12) Daylighting systems and associated lighting controls for daylight harvesting.

(13) Building commissioning or retrocommissioning.

(f) “Conventional energy fuel” means any of the following:

(1) A fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, and fuel oil.

(2) Natural gas, including liquefied natural gas, *other than that used in cogeneration gas-fired technology*.

(3) Nuclear fissionable materials.

(4) Coal.

(g) “*Delinquent repayment installment*” means a due and payable repayment installation that was not paid within the time specified in the schedule for repayment.

~~(g)~~

(h) “Demand response” means reductions or shifts in electricity consumption by customers in response to either economic or reliability signals.

(i) “Due and payable” means the date as specified in the schedule for repayment for each repayment installment.

~~(h)~~

(j) “~~Eligible building~~ real property” means a nonresidential building that completed construction on or before January 1, 2014, 2015, and is located within the boundaries of the state.

~~(i)~~

(k) “Energy remittance repayment agreement” means a contractual agreement between an ~~eligible building~~ owner of an eligible real property and the commission, secured by a lien, as described in Section 25987.21, recorded in the county where the

property is situated and on an eligible ~~building~~ *real property* specially benefited by a ~~new energy improvement~~ *the project* for which the commission will make reimbursement or a direct payment to the party financing the ~~energy improvements~~ *project*, and “contractual energy remittance” means that reimbursement or direct payment. The amount to be repaid pursuant to the energy remittance repayment agreement shall include the costs necessary to finance the ~~building energy efficiency improvements~~ *project* less any rebates, grants, and other direct financial assistance received by the owner pursuant to other ~~law and law~~, a loan loss reserve fee, in an amount to be established by the third-party administrator in consultation with the commission and ~~the any~~ warehouse financier under contract entered into pursuant to paragraph ~~(8)~~ (3) of subdivision (a) of Section 25987.25, to insure against nonperformance of the loan and other losses of the program, and a program administrative cost fee.

~~(j)~~

(l) “Energy efficiency specialist” means an individual or business authorized or certified by rules of the commission to analyze, evaluate, or install a ~~renewable energy source, building energy efficiency improvement, or water efficiency improvement~~ for eligible property *project*.

~~(k)~~

(m) “Financial assistance” means either of the following:

(1) Loans, loan loss reserves, interest rate reductions, secondary loan purchase, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined and approved by the commission.

(2) Other types of assistance the commission determines are appropriate.

~~(l)~~

(n) “Loan balance” means the outstanding principal balance of loans secured by a mortgage or deed of trust with a first or second lien on eligible *real property*.

~~(m)~~

(o) “Loan loss reserve fee” means a fee that serves as collateral in the event of a loan default.

~~(n)~~

(p) “Nonresidential-Building Real Property Energy Retrofit Bond” means a bond issued pursuant to Section 25987.31 that is secured by an energy remittance repayment agreement *lien* on *real property and is* entered into voluntarily to finance the ~~installation of renewable energy sources, building energy efficiency improvement or retrofits, or water efficiency improvements~~ *project*.

~~(o)~~

(q) “Participant” means a person, or an entity or group of entities, engaged in business or operations in the state, whether organized for profit or not for profit, that, as a qualified applicant, is approved for financial assistance pursuant to Article 2 (commencing with Section 25987.5) and has entered into an energy remittance repayment agreement with the commission for the purpose of implementing a project in a manner prescribed by the commission. “*Participant*” *includes a subsequent owner taking title to real property subject to an energy remittance repayment agreement lien.*

~~(p)~~

(r) “Portfolio” means an aggregation of approved applications.

~~(q)~~

(s) “Program” means the Nonresidential-Building Real Property Energy Retrofit Financing Program established by the commission in accordance with Section 25987.7.

~~(r)~~

(t) “Program administration cost fee” means a fee imposed for the costs incurred by the commission, the authority, and the State Board of Equalization to administer the program.

~~(s)~~

(u) “Project” means an improvement to an eligible ~~building~~ *real property* that constitutes a water efficiency improvement, ~~alternative source of energy, renewable energy improvement, or~~ building energy efficiency improvement.

~~(t)~~

(v) “Qualified applicant” means a person or business entity who does all of the following:

(1) Owns an eligible ~~building~~ *real property* that has a ratio of loan balance to its appraised value not to exceed 85 ~~percent and~~ *percent, which is* subject to adjustment by the program administrator at the time the person’s program application is approved, as shown in the records of the county assessor, unless

1 the holder of the deed of trust or mortgage recorded against the
2 eligible *real* property that has priority over all other deeds of trust
3 or mortgages recorded against the eligible *real* property has
4 consented in writing to the recording of an energy remittance
5 repayment agreement *lien* pursuant to this division against the
6 eligible *real* property.

7 (2) Timely submits to the commission a complete application,
8 which notes the existence of any priority mortgage or deed of trust
9 on the eligible property and the identity of the holder of the
10 mortgage or deed of trust, to join the program and consents to the
11 levying of a ~~special assessment~~ *lien in the amount of the energy*
12 *remittance repayment agreement* on the *real* property pursuant to
13 this chapter.

14 (3) Meets standard of credit worthiness that the commission
15 may establish.

16 ~~(u)~~

17 (w) “Renewable energy” means heat, processed heat, space
18 heating, water heating, steam, space cooling, refrigeration,
19 mechanical energy, electricity, fuel cells, or energy in any form
20 convertible to these uses, and including energy storage
21 technologies, that does not expend or use conventional energy
22 fuels, and that uses any of the following electrical generation
23 technologies:

24 (1) Biomass.

25 (2) Solar thermal.

26 (3) Photovoltaic.

27 (4) Wind.

28 (5) Geothermal.

29 ~~(v)~~

30 (x) “Renewable energy improvement” means one or more
31 fixtures, products, systems, or devices, or an interacting group of
32 fixtures, products, systems, or devices, that use an alternative
33 ~~source of energy~~ *energy source*, are permanently affixed ~~to to, or~~
34 ~~located on, the building or located on the premises of the building~~
35 ~~site, real property~~, and directly benefit an eligible ~~building~~ *real*
36 *property* or that are installed on the customer side of a meter of an
37 eligible ~~building~~ *real property* and that produce renewable energy
38 ~~from renewable resources, including, but not limited to,~~
39 ~~photovoltaic, solar thermal, small wind, biomass, fuel cells, or~~

1 geothermal systems such as ground source heat pumps, as may be
2 approved by the commission.

3 (y) “Repayment installation” means the monthly amount
4 specified pursuant to the agreed schedule for repayment approved
5 by the commission.

6 (w)

7 (z) “Third-party administrator” means an entity selected by the
8 commission through a request for a proposal to manage project
9 applications and make recommendations to the commission as to
10 an individual project’s compliance with this chapter.

11 (x)

12 (aa) “Warehouse financier” means a financial entity, bank, or
13 pension fund, chosen by the commission through a request for
14 proposal to provide an ongoing and revolving source of financing
15 for projects applications approved pursuant to Section 25987.20.

16
17 Article 2. Nonresidential ~~Building~~ Real Property Energy
18 Retrofit Financing Program
19

20 25987.5. The purpose of the Nonresidential ~~Building~~ Real
21 Property Energy Retrofit Financing Program is to help provide
22 the special benefits of water efficiency improvements, ~~alternative~~
23 ~~energy~~, *renewable energy improvements*, and building energy
24 efficiency improvements to owners of eligible ~~buildings~~ *real*
25 *properties* who voluntarily participate in the program by
26 establishing, developing, financing, and administering a program
27 to assist those owners in completing improvements.

28 25987.6. The commission shall have and exercise all rights
29 and powers necessary or incidental to or implied from the specific
30 powers granted to the commission by this chapter. Those specific
31 powers shall not be considered as a limitation upon any power
32 necessary or appropriate to carry out the purposes and intent of
33 this chapter.

34 25987.7. (a) The commission shall establish, develop, finance,
35 and administer, ~~pursuant to~~ *consistent with* Section 25987.9, the
36 Nonresidential ~~Building Energy~~ Real Property Retrofit Financing
37 Program. The commission shall provide general direction and
38 oversight to the authority and board as they complete duties
39 specified in this chapter. The program shall be designed to provide
40 financial assistance for an owner of an eligible ~~building~~ *real*

1 *property* to use one or more energy efficiency specialists to retrofit
2 *or benefit* the property with one or more ~~alternative energy sources~~
3 ~~or~~ renewable energy improvements, building energy efficiency
4 improvements, or water efficiency improvements, by applying to
5 the commission for inclusion of the owner's project in a portfolio
6 that will be financed through the use of the revenue bonds issued
7 pursuant to this chapter. These bonds shall be secured by revenues
8 generated through energy remittance repayment ~~agreements~~
9 ~~agreement liens recorded on the buildings against the real~~
10 ~~properties~~ benefited by the projects in the portfolio.

11 (b) The program shall provide financial assistance for
12 improvements when the total energy and water cost savings
13 realized by the *real* property owner, and any successor or
14 successors to the *real* property owner, during the useful life of the
15 improvements, as determined by an analysis required pursuant to
16 subdivision (i) of Section 25987.13 are expected to equal or exceed
17 the total costs incurred by the owner pursuant to the program.

18 (c) In developing rules to certify an energy efficiency specialist,
19 the commission shall consult with the Public Utilities Commission,
20 the investor-owned utilities, the contractor community, and other
21 entities the commission deems appropriate and consider existing
22 trade certifications or licensing requirements applicable to
23 occupations that perform work contemplated pursuant to this
24 chapter.

25 (d) (1) Within six months after the first two years of
26 implementation of the program established pursuant to subdivision
27 (a) or after the expenditure of the first two hundred fifty million
28 dollars (\$250,000,000) of proceeds authorized pursuant to Section
29 25987.29, whichever occurs earlier, the commission shall prepare
30 and make publicly available a report on the efficacy of the program
31 in achieving the purposes of the program as specified in Section
32 25987.5 and recommendations that would enhance the ability of
33 the program to achieve those purposes.

34 (2) The commission shall post the report on its Internet Web
35 site.

36 (3) Prior to the additional expenditure of the proceeds authorized
37 pursuant to Section 25987.29, the commission shall hold at least
38 a *one* public hearing and take public comments on the report.

39 25987.8. To receive financial assistance pursuant to this
40 chapter, a qualified applicant shall contractually agree to the

1 recording of an energy remittance repayment agreement *lien* on
2 the eligible ~~building~~ *real property* that is being retrofitted *or*
3 *benefited*.

4 25987.9. By July 1, ~~2014~~, 2015, the commission shall develop
5 a request for proposal to develop the program by a third-party
6 administrator. The third-party administrator shall administer the
7 program and establish an automated, asset-based underwriting
8 system for all eligible ~~buildings~~ *real properties* in the state. The
9 third-party administrator shall provide consultation to the
10 commission in developing guidelines for the program. The
11 third-party administrator shall provide an independent energy
12 advisor to assist ~~building~~ *owners of real properties* in evaluating
13 ~~proposals for energy efficiency and renewable energy~~
14 ~~improvements projects. The third-party administrator shall provide~~
15 ~~a loan servicer to service the loans.~~ The party selected as the
16 third-party administrator shall only be selected if the program
17 proposal submitted by the party requires all costs, including startup
18 costs of the program, to be covered by the loan recipients, the
19 administrator, the bond purchasers, or some combination thereof.
20 The program selected shall not include General Fund costs or
21 ~~liabilities, with the exception of loans from the General Fund~~
22 ~~pursuant to Section 25987.41 utilized for startup costs.~~ *liabilities*.

23 25987.10. The third-party administrator shall establish
24 underwriting guidelines that consider an applicant's qualifications,
25 and other appropriate factors, including, but not limited to, credit
26 reports and loan-to-value ratios, consistent with good and
27 customary lending practices, necessary for the authority to obtain
28 a bond rating for bonds issued pursuant to Article 3 (commencing
29 with Section 25987.29) for a successful bond sale.

30 25987.11. The third-party administrator shall disclose to an
31 owner of a ~~nonresidential building~~ *an eligible real property* all
32 fees imposed pursuant to this chapter, including the loan loss
33 reserve fee, the program administration cost fee, and the interest
34 rate charged, prior to the submission of an application by the
35 ~~building~~ owner.

36 25987.12. (a) An owner of an eligible ~~building~~ *real property*
37 who wishes to undertake an improvement shall submit to the
38 third-party administrator an application to participate in the
39 program.

1 (b) The submission of an application is deemed to be a voluntary
2 agreement by the owner for the commission to record the energy
3 remittance repayment agreement ~~on the deed of lien against the~~
4 eligible ~~building~~ *real property* upon the approval of the application.

5 (c) The application form developed by the third-party
6 administrator shall include a statement in no less than 12-point
7 type stating the following:

8
9 SUBMISSION OF THIS APPLICATION CONSTITUTES THE
10 VOLUNTARY CONSENT OF THE APPLICANT FOR THE
11 RECORDATION OF THE ENERGY REMITTANCE
12 REPAYMENT AGREEMENT ~~ON THE DEED OF LIEN~~
13 *AGAINST THE ELIGIBLE REAL PROPERTY. UPON THE*
14 *APPROVAL BY THE COMMISSION OF THE APPLICATION*
15 *AND THE RECORDATION OF THE ENERGY REMITTANCE*
16 *REPAYMENT AGREEMENT, AGREEMENT LIEN, A LIEN IN*
17 *THE AMOUNT SPECIFIED IN THE ENERGY REMITTANCE*
18 *REPAYMENT AGREEMENT SHALL BE SECURED BY*
19 *RECORDED ON THE PROPERTY TO SECURE THE*
20 *AGREEMENT.*

21
22 25987.13. The owner of an eligible ~~building~~ *real property* shall
23 include all of the following information in the application:

24 (a) The name, business address, and email address of the owners
25 of the eligible ~~building~~ *real property*.

26 (b) The names of all entities that hold a secured lien on the
27 eligible ~~building~~ *real property* and their contact information.

28 (c) The total dollar amount of liens that have been recorded ~~on~~
29 *against the eligible building real property.*

30 (d) An appraisal of the value of the eligible ~~building~~ *real*
31 *property* that has been conducted within the past six months or
32 during an appropriate timeframe consistent with industry practices
33 for underwriting of nonresidential buildings.

34 (e) A detailed description of the ~~alternative sources of energy,~~
35 ~~and building energy efficiency and renewable energy improvements~~
36 ~~being project to be funded.~~

37 (f) The name of the financial institution providing interim
38 financing for the ~~improvements project~~ or the warehouse line of
39 credit developed pursuant to Section 25987.26.

1 (g) The structure of the loan financing the ~~alternative sources~~
2 ~~of energy, and building energy efficiency and renewable energy~~
3 ~~improvements project.~~

4 (h) Any information that the commission or third-party
5 administrator requires to verify that the owner will complete the
6 project.

7 (i) An analysis performed by an energy efficiency ~~and renewable~~
8 ~~energy specialist to quantify the costs of the alternative sources of~~
9 ~~energy, and building energy efficiency, renewable energy, and~~
10 ~~water efficiency improvements, the project, and total energy and~~
11 ~~water cost savings realized by the owner, owner or his or her~~
12 ~~successor during the effective useful life of, and estimated carbon~~
13 ~~impacts of, the improvements, project, including an annual~~
14 ~~cashflow analysis.~~

15 (j) Copies of an application that have been made for energy
16 efficiency incentives identified pursuant to subdivision (d) of
17 Section 25987.19 for any applicable retrofits.

18 (k) Other information deemed necessary by the commission or
19 the third-party administrator.

20 (l) The total amount of the loan requested showing any and all
21 adjustments to reduce the loan amount after all federal, state, local,
22 and ratepayer-funded incentives have been applied.

23 25987.14. ~~(a)~~ In addition to the information required under
24 Section 25987.13, an applicant shall provide in the application a
25 detailed description of all of the following:

26 ~~(1)~~

27 ~~(a) The eligible building; real property.~~

28 ~~(2)~~

29 ~~(b) The transactional activities associated with the eligible~~
30 ~~improvements, including the transactional costs.~~

31 ~~(3)~~

32 ~~(c) Other information deemed necessary by the commission or~~
33 ~~the third-party administrator.~~

34 ~~(b) An applicant shall agree in the application to remit repayment~~
35 ~~installments due by an electronic funds transfer under procedures~~
36 ~~prescribed by the board.~~

37 25987.15. (a) The third-party administrator shall make
38 recommendations to the commission regarding the approval or
39 disapproval of an application.

1 (b) The commission may approve and accept an applicant into
2 the program if both of the following conditions are met:

3 (1) The applicant is a qualified applicant.

4 (2) Prior to receiving funding for renewable energy improvement
5 ~~or alternative energy sources~~, the applicant shall show both of the
6 following:

7 (A) Evidence of intent to make feasible energy efficiency
8 upgrades recommended by the analysis required pursuant to
9 subdivision (i) of Section 25987.13.

10 (B) Evidence of intent to enroll in eligible demand response
11 programs, if appropriate.

12 (c) The commission shall determine appropriate guarantees
13 necessary to ensure cost neutrality of the improvements that may
14 include the requirement that the owner of the eligible building
15 obtain insurance issued by an A.M. Best “A” or better rated
16 insurance carrier or a similar product as approved by the
17 commission.

18 25987.16. (a) Upon the mutual agreement of the participant
19 and the third-party administrator, the third-party administrator
20 shall establish an annualized schedule for the repayment *with*
21 *monthly repayment installments* required by the energy remittance
22 repayment agreement, including the interest charged, administrative
23 cost fee, and loan loss *reserve* fee.

24 ~~(b) The board shall collect the repayment installments that~~
25 ~~become due and payable.~~

26 (e)

27 (b) (1) The period for repayment of the energy remittance
28 repayment agreement shall not exceed the effective useful life of
29 the improvements or 20 years, whichever is shorter.

30 (2) The calculated effective useful life of the ~~alternative source~~
31 ~~of electricity~~, and building energy efficiency and renewable energy
32 improvements, shall be calculated using methodologies adopted
33 by the commission, in consultation with the Public Utilities
34 Commission.

35 (A) The commission shall hold at least one public hearing on
36 the useful life of the improvement to take public and industry
37 comments on the commission’s determinations.

38 (B) The commission shall update the useful life of improvements
39 as new information becomes available and when new technologies

1 become available and shall make this information publicly available
2 on its Internet Web site.

3 (C) The commission shall remove any improvements from its
4 information on improvements if the improvement is no longer
5 available or if the commission determines that manufacturer defects
6 disqualify the improvement from loan eligibility.

7 ~~(d) Upon the failure of the participant to pay any installment~~
8 ~~toward the repayment of the energy remittance repayment~~
9 ~~agreement when the installment becomes due and owing pursuant~~
10 ~~to the schedule for repayment, the board shall assess a penalty on~~
11 ~~the delinquent payment of 10 percent of the unpaid installment.~~

12 ~~(e) Within 60 days of a failure to pay the scheduled energy~~
13 ~~remittance payment, the board shall issue a demand letter to the~~
14 ~~participant with notice provided to the commission and provide~~
15 ~~the participant with 30 days to cure the default.~~

16 ~~(f) (1) If the participant fails to cure the default within the time~~
17 ~~allotted, the board may declare the entire outstanding energy~~
18 ~~remittance repayment agreement balance, including any interest~~
19 ~~due, penalties assessed, and costs of collection incurred,~~
20 ~~immediately due and owing and foreclose on the energy remittance~~
21 ~~repayment agreement by either judicial or nonjudicial foreclosure.~~

22 ~~(2) Revenue generated from the sale of the eligible building~~
23 ~~shall be distributed to satisfy liens on the eligible building in~~
24 ~~accordance with the priority of the liens as provided by law.~~

25 ~~(g) Upon the full repayment of the balance of the energy~~
26 ~~remittance repayment agreement, and interest and penalties that~~
27 ~~had accrued, the board shall notify the commission of that~~
28 ~~repayment. Within 30 days of the receipt of the notice, the board~~
29 ~~shall record with the county in which the eligible building is located~~
30 ~~a release of the energy remittance repayment agreement.~~

31 *(c) The loan servicer shall collect the repayment installments*
32 *that become due and payable. Funds collected shall be remitted*
33 *to the commission. A repayment installment is delinquent upon the*
34 *failure of the participant to pay any installment due and payable*
35 *pursuant to the schedule for repayment. The loan servicer shall*
36 *notify the board of the delinquency.*

37 *(d) (1) The board shall collect the repayment installments that*
38 *are delinquent. Funds collected shall be remitted to the*
39 *commission. The collection provisions contained in the Fee*
40 *Collection Procedures Law (Chapter 4 (commencing with Section*

1 55121) of Part 30 of Division 2 of the Revenue and Taxation Code),
2 to the extent feasible or practical, shall apply to the collection of
3 the delinquent repayment installments. For the purposes of chapter,
4 reference in the Fee Collection Procedures Law to “fee” shall
5 include the repayment installment imposed by this chapter and
6 references to the “fee payer” shall include a participant required
7 to pay the repayment installment imposed pursuant to this chapter.
8 For the purposes of collection, a delinquent repayment installment
9 is a final liability of the participant.

10 (2) The board shall assess liquidated damages on the delinquent
11 repayment installment of 10 percent of the unpaid installment.
12 Within 60 days of a failure to pay the delinquent repayment
13 installment, the board shall issue a demand letter to the participant,
14 with written notice provided to the commission, and provide the
15 participant with 30 days from the date of the demand letter to cure
16 the delinquency before the board commences further action to
17 collect a delinquent repayment installment.

18 (3) The board may periodically consult with the commission on
19 the status of the energy remittance agreements with outstanding
20 delinquent repayment installments. If the board deems that
21 available remedies to collect the delinquent repayment installments
22 on an energy remittance repayment agreement have been
23 exhausted, to the extent feasible or practical, and the delinquency
24 cannot be cured, the board shall inform the commission in writing.
25 At a business meeting, the commission may declare the entire
26 outstanding energy remittance repayment agreement balance,
27 including any interest due, liquidated damages assessed, and costs
28 of collection incurred, immediately due and payable and direct
29 the board to take action to satisfy the energy remittance repayment
30 agreement lien. The board may contract with a foreclosure service
31 provider to carry out the foreclosure on behalf of the commission.

32 (4) Revenues generated from the sale of the eligible real
33 property shall be distributed to satisfy liens on the eligible
34 buildings in accordance with the priority of the liens as provided
35 by law.

36 (5) The board shall perform the collection of delinquent
37 repayment installments and the foreclosure duties imposed by this
38 chapter as a ministerial function on behalf of the commission.

39 (6) The board may prescribe, adopt, and enforce guidelines
40 relating to the collection of the delinquent repayment installments.

1 *The guidelines adopted pursuant to this section shall be exempt*
2 *from the Administrative Procedures Act (Chapter 3.5 (commencing*
3 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*
4 *Government Code).*

5 *(e) Upon the full repayment of the balance of the energy*
6 *remittance repayment agreement lien, accrued interest, and*
7 *liquidated damages, the commission shall record with the county*
8 *in which the eligible real property is located a release of the energy*
9 *remittance repayment agreement lien.*

10 25987.17. ~~(a) A participant shall remit repayment installments~~
11 ~~due by an electronic funds transfer to the board under procedures~~
12 ~~prescribed by the board.~~

13 ~~(b) Any participant remitting amounts due pursuant to~~
14 ~~subdivision (a) shall perform electronic funds transfers in~~
15 ~~compliance with the due dates prescribed in the schedule for~~
16 ~~repayment. Payment is deemed complete on the date the electronic~~
17 ~~funds transfer is initiated if settlement to the state's demand account~~
18 ~~occurs on or before the banking day following the date the transfer~~
19 ~~is initiated. If settlement to the state's demand account does not~~
20 ~~occur on or before the banking day following the date the transfer~~
21 ~~is initiated, payment is deemed to occur on the date settlement~~
22 ~~occurs.~~

23 ~~(c) Any participant who remits a repayment installment by~~
24 ~~means other than appropriate electronic funds transfer shall pay a~~
25 ~~penalty of 10 percent of the repayment installment incorrectly~~
26 ~~remitted.~~

27 ~~(d) The board may prescribe, adopt, and enforce guidelines~~
28 ~~relating to the collection of the energy remittance repayment~~
29 ~~installments. The guidelines adopted pursuant to this section shall~~
30 ~~be exempt from the requirements of the Administrative Procedure~~
31 ~~Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
32 ~~Division 3 of Title 2 of the Government Code).~~

33 25987.18. (a) Prior to approving an application for inclusion
34 into a loan portfolio and the recordation of the energy remittance
35 repayment agreement, *agreement lien*, or a modification of an
36 approved application, the commission shall conduct a public
37 meeting on the proposed application or modification.

38 (b) The commission shall post a notice of the hearing on the
39 commission's Internet Web site and provide the notice, in writing,

1 to all lienholders of the eligible building no later than 30 days prior
2 to the public meeting.

3 (c) The notice shall specify all of the following:

4 (1) The name of the qualified applicant.

5 (2) The address of the eligible ~~meeting~~ *real property*.

6 (3) The amount required to be repaid *secured* by the energy
7 remittance repayment agreement *lien* proposed to be recorded ~~on~~
8 *against* the eligible ~~building~~ *real property*.

9 (4) The date and place of the public meeting.

10 (5) The schedule for repayment of the contractual energy
11 remittance and associated costs as agreed upon between the
12 qualified applicant and the commission.

13 (6) The interest rate assessed pursuant to the energy remittance
14 repayment agreement.

15 (7) A detailed description of the proposed modification, if
16 applicable.

17 (d) The notice shall inform the lienholder that any complaints
18 or objections to either the approval of the application and the
19 recordation of the energy remittance repayment agreement *lien* on
20 the eligible ~~building~~ *real property* or the modification of an
21 approved application shall be submitted, in writing, to the
22 commission not less than 10 days prior to the public meeting.

23 25987.19. In evaluating the eligibility of an applicant, the
24 commission shall consider the creditworthiness of the applicant
25 and the effectiveness of the improvements applying the following
26 criteria, which may include, but not be limited to, all of the
27 following:

28 (a) Whether applicants are legal owners of the underlying *real*
29 *property*.

30 (b) Whether applicants are current on any outstanding mortgage
31 and property tax payments.

32 (c) Whether applicants are in default or in bankruptcy
33 proceedings.

34 (d) Whether applicants have applied for incentives, if they are
35 available, through the energy efficiency programs offered by an
36 electrical or gas corporation or a publicly owned utility.

37 (e) Whether improvements financed by the program follow
38 applicable standards including any guidelines adopted by the
39 commission.

1 25987.20. (a) The commission shall approve an application
2 at a business meeting. Upon approval of an application, the
3 commission shall ~~authorize a recording of record~~ the energy
4 remittance repayment agreement ~~on the deed of lien against the~~
5 ~~eligible building.~~ *real property.*

6 (b) The commission shall specify the amount required to be
7 paid ~~to the board~~ pursuant to the energy remittance repayment
8 ~~agreement;~~ *agreement lien*, the schedule of repayment *that details*
9 *the monthly repayment installment amount and due date*, and the
10 interest rate charged.

11 (c) The commission shall approve a modification of an approved
12 application at a business meeting.

13 25987.21. (a) The energy remittance repayment agreement
14 ~~lien that is secured by a lien recorded pursuant to this section;~~
15 *section* shall have a prominent header on the document that reads
16 “Energy Remittance Repayment Agreement Lien” in 14-point type
17 and contains all of the following information related to the affected
18 real property:

- 19 (1) The assessor’s parcel number.
- 20 (2) The owners of record.
- 21 (3) The legal description.
- 22 (4) The street address.

23 (b) ~~Except as otherwise required by law, the energy remittance~~
24 ~~repayment agreement shall be superior in priority to all subsequent~~
25 ~~liens recorded on the deed of the eligible building except where~~
26 ~~the first mortgage is refinanced, in which case the energy~~
27 ~~remittance repayment agreement shall remain secondary to the~~
28 ~~primary mortgage.~~

29 (c) ~~The sale of the eligible building to enforce the payment of~~
30 ~~general ad valorem taxes shall not extinguish the energy remittance~~
31 ~~repayment agreement recorded on the eligible building.~~

32 (d) ~~In the event of foreclosure, the energy remittance repayment~~
33 ~~agreement installments shall not be due and owing during such~~
34 ~~time when the building is owned by a financial institution taking~~
35 ~~title by way of foreclosure. The installments owing pursuant to~~
36 ~~the energy remittance repayment agreement shall, however,~~
37 ~~continue to accrue and shall become due 60 days after a new,~~
38 ~~nonfinancial owner takes title.~~

39 (e) ~~Notwithstanding any other law, in the event of a foreclosure~~
40 ~~of the property, the energy remittance repayment agreement shall~~

1 ~~not be extinguished, unless the outstanding balance of the energy~~
2 ~~remittance repayment agreement, including the interest accrued~~
3 ~~and all penalties and fees assessed prior to the foreclosure, is fully~~
4 ~~paid through the foreclosure proceeding.~~

5 *(5) The amount of the lien.*

6 *(b) The energy remittance agreement lien shall have the force,*
7 *effect, and priority of a judgment lien from the time of recording*
8 *in the county where the real property is located.*

9 25987.22. (a) No later than 30 days after the approval of an
10 application, the commission ~~or the third-party administrator~~ shall
11 ~~forward the agreement and any other information necessary to~~
12 ~~collect the installment repayments to the board which shall record~~
13 ~~with the county in which the eligible-building real property is~~
14 ~~located the energy remittance repayment agreement-on the deed~~
15 ~~of the eligible building. lien.~~ The ~~board~~ *third-party administrator*
16 shall notify the commission upon the recordation of the energy
17 remittance repayment ~~agreement.~~ *agreement lien.*

18 (b) Within 60 days of the notice of recording of the energy
19 remittance repayment ~~agreement,~~ *agreement lien,* the commission
20 shall include the approved application in a portfolio posted on the
21 commission's Internet Web site.

22 25987.23. (a) ~~The board~~ *commission* shall deposit into the
23 ~~Nonresidential-Building Real Property Energy Retrofit Debt~~
24 ~~Servicing Fund established pursuant to Section 25987.38, or the~~
25 ~~accounts within the fund,~~ any moneys collected pursuant to this
26 chapter.

27 ~~(b) The board may charge a program administration cost fee on~~
28 ~~the owner of an eligible building to cover its costs as well as the~~
29 ~~authority's and the commission's costs in implementing this~~
30 ~~chapter.~~

31 ~~(c) Nothing in this~~

32 *(b) This chapter shall not* be construed to require investor-owned
33 utilities or municipal utilities to serve in the role as a third-party
34 private guarantor or loan servicer or otherwise provide credit
35 support for the loan program.

36 25987.24. (a) A local government that has issued revenue
37 bonds pursuant to a program providing financial assistance to
38 owners of nonresidential buildings undertaking a renewable energy,
39 water efficiency, or energy efficiency retrofit improvement on the

1 ~~buildings~~ *real properties* may apply to the commission for
2 participation in the program.

3 (b) Upon the approval of an application submitted by the local
4 government, the authority may purchase all those outstanding
5 revenue bonds issued by the local government.

6 (c) Upon the purchase of the revenue bonds issued by the local
7 government by the authority, the authority succeeds to all rights
8 conferred upon the bondholder by those revenue bonds and the
9 local government shall remit revenue that is used to secure those
10 revenue bonds to the ~~board~~ *commission*.

11 25987.25. (a) To the extent that the commission determines
12 necessary to effectively complete the duties specified by this
13 chapter, the commission shall do all of the following:

14 (1) (A) Analyze and evaluate standards for nonresidential
15 energy building retrofits previously developed by various national
16 and international organizations to provide uniformity and
17 transparency for financial institutions evaluating loan proposals
18 for energy improvements to nonresidential buildings. To the extent
19 that the commission determines necessary, this evaluation shall
20 be completed not later than January 1, ~~2015~~ 2016.

21 (B) The evaluation shall review existing protocols or a
22 combination of elements of existing measurement protocols and
23 shall be made available in an electronic format to financial
24 institutions and local governments initiating loans pursuant to this
25 chapter.

26 (2) Develop, in consultation with the Department of Real Estate
27 and representatives from the commercial real estate industry, a
28 model energy aligned lease provision that modifies, upon the
29 agreement between the owner and tenants of ~~an eligible building~~,
30 *real property*, a commercial lease agreement allowing the owners
31 to recover the costs of the renewable energy, water efficiency, or
32 energy efficiency retrofit improvements that result in operational
33 savings based on the useful life of the retrofit while protecting
34 tenants from underperformance of the building energy efficiency
35 improvements.

36 (3) Develop a request for proposal to contract with one or more
37 financial institutions to secure a short-term, revolving credit facility
38 (warehouse line of credit) for the purpose of creating an interim
39 financing mechanism for the loans that would be aggregated for
40 the purposes of issuance of a revenue bond pursuant to Section

1 25987.29. The warehouse line of credit shall be drawn by the
2 third-party administrator for origination of direct loans to qualified
3 applicants.

4 (b) In implementing this chapter, the commission shall do all
5 of the following:

6 (1) Consult with the Public Utilities Commission, representatives
7 from the investor-owned and publicly owned utilities, local
8 governments, real estate licensees, commercial builders,
9 commercial property owners, small businesses, financial
10 institutions, commercial property appraisers, energy rating
11 organizations, and other entities the commission deems appropriate.

12 (2) Hold at least one public hearing.

13 (3) Adopt guidelines and standards for the purposes of
14 implementing this chapter at a publicly noticed meeting offering
15 all interested parties an opportunity to comment. For the initial
16 adoption of the guidelines and standards, the commission shall
17 provide a written public notice at least 30 days prior to the meeting.
18 For the adoption of any substantive change to the guidelines and
19 standards, the commission shall provide a written public notice at
20 least 10 days prior to the meeting. Notwithstanding any other law,
21 guidelines or standards adopted pursuant to this section shall be
22 exempt from the requirements of Chapter 3.5 (commencing with
23 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
24 Code. *In implementing the requirements of this chapter, in the*
25 *interest of promoting consistency across the demand-side*
26 *management programs statewide, the commission shall seek to*
27 *harmonize these requirements, to the greatest extent practicable,*
28 *with the rules and requirements of the Public Utilities Commission*
29 *for its nonresidential energy efficiency, distributed generation,*
30 *demand response, and other demand-side management programs.*

31 (4) Establish loan limits for each type of eligible improvements
32 for commercial or public buildings.

33 (5) Establish standard metrics for estimating performance of
34 eligible improvements for different building types ~~and different~~
35 ~~profits of energy consumption~~ to be used in underwriting loans
36 made pursuant to the program.

37 (6) Establish standard assumptions to be used for estimating the
38 energy benefits of improvements that shall include a reasonable
39 assumption for the cost of kilowatthours and therms and a

1 reasonable assumption of future expectations of the rate these costs
2 will increase.

3 (7) Establish those standards, guidelines, and procedures,
4 through regulation, including, but not limited to, standards of
5 creditworthiness for qualification of program applicants, that are
6 necessary to ensure the financial stability of the program and
7 otherwise prevent fraud and abuse.

8 (8) Establish those measurement and verification standards
9 necessary to ensure that the building energy efficiency
10 improvements financed pursuant to this chapter are realized at a
11 level specified by the commission.

12 (9) Consider reliance on existing trade certifications or licensing
13 requirements applicable to occupations that perform the work
14 contemplated under this chapter.

15 (10) Establish qualifications for the certification of contractors
16 to construct or install building energy efficiency improvements.

17 (11) Contract with a party, public or private, to do any of the
18 following:

19 (A) Ensure that appropriate and reasonable steps are taken to
20 monitor and verify the quality and longevity of building energy
21 efficiency improvements financed pursuant to this ~~division~~
22 *program* and measure the total energy savings achieved by the
23 program.

24 (B) ~~Determine the average amount, in aggregate, paid to~~
25 ~~contractors and financial institutions pursuant to~~ *median, average,*
26 *and aggregate amount financed by an applicant for eligible*
27 *improvements to different building types under the program.* Make
28 data on program participation publicly available in a timely manner
29 and in an aggregate format that would not provide identifying
30 information about individual customers of the electrical and gas
31 corporations and include, at a minimum, the types of energy
32 efficiency measures installed, the location of each customer
33 receiving ratepayer-funded energy efficiency assistance, the amount
34 of funds expended at each site, the expected annual energy savings
35 and reduced energy usage expected in kilowatthours or therms.
36 Unless the affected person, customer, or entity consents, the
37 information, data, and reports required to be provided pursuant to
38 this section shall not include any of the following:

39 (i) Personal information as defined in subdivision (e) of Section
40 1798.80 of the Civil Code.

1 (ii) A customer's electrical or gas consumption data as defined
2 in subdivision (a) of Section 8380.

3 (iii) Other information excluded from public disclosure pursuant
4 to the California Public Records Act (Chapter 3.5 (commencing
5 with Section 6250) of Division 7 of Title 1 of the Government
6 Code).

7 (12) Adopt a standard notice and disclosure form for the
8 purposes of Section 25987.27.

9 25987.26. Credit issued under the warehouse line of credit
10 shall not be deemed to constitute a debt or liability of the state or
11 of any political subdivision thereof, or a pledge of the full faith
12 and credit of the state or of any political subdivision, but shall be
13 payable solely from the funds provided therefor. All credit
14 instruments shall contain a statement to the following effect:

15
16 "Neither the faith and credit nor the taxing power of the State
17 of California is pledged to the payment of principal and interest
18 on this credit instrument."
19

20 25987.27. (a) From the date upon which financial assistance
21 is approved by the commission pursuant to Section 25987.20 and
22 for all subsequent transactions entered into pursuant to this chapter,
23 a seller of real property subject to an energy remittance repayment
24 agreement shall deliver to the buyer an energy remittance
25 repayment agreement notice and disclosure as adopted by the
26 commission pursuant to paragraph ~~(9)~~ (12) of subdivision ~~(a)~~ (b)
27 of Section 25987.25.

28 (b) (1) Upon the delivery of the completed notice and disclosure
29 form to the buyer of real property, the seller and his or her agent
30 is not required to provide additional information relative to the
31 energy remittance repayment agreement.

32 (2) The information in the notice and disclosure form is deemed
33 sufficient to provide notice to the buyer of the existence of the
34 energy ~~improvements, improvements and of the energy remittance~~
35 ~~repayment agreement, and the repayment obligation that will be~~
36 ~~assigned to, and assumed by, the buyer upon taking title~~ *agreement*
37 *lien.*

38 (3) The commission or the third-party administrator shall report
39 periodically, but no less often than once annually, on the number
40 and amount of loans that are made available in areas of the state

1 where climate conditions are more extreme and in disadvantaged
2 communities.

3 25987.28. No later than June 30, ~~2015~~, 2016, and no later than
4 June 30 of every fifth year thereafter, the *California* State Auditor
5 shall conduct, or cause to be conducted, a performance audit of
6 the program.—~~The Notwithstanding Section 10231.5 of the~~
7 *Government Code*, the *California* State Auditor shall prepare a
8 report and recommendations on each audit conducted and present
9 the report and recommendations to the President pro Tempore of
10 the Senate and the Speaker of the Assembly.

11
12 Article 3. Nonresidential ~~Building~~ *Real Property* Energy
13 Retrofit Bond
14

15 25987.29. The authority, on behalf of the commission, may
16 incur indebtedness and issue and renew negotiable bonds, notes,
17 debentures, or other securities of any kind or class. All
18 indebtedness, however evidenced, shall be payable solely from
19 moneys received pursuant to this chapter and the proceeds of its
20 negotiable bonds, notes, debentures, or other securities and shall
21 not exceed the sum of two billion dollars (\$2,000,000,000).

22 25987.30. The Legislature may, by statute, authorize the
23 authority to issue bonds, ~~as defined in Section 25987.31~~ in excess
24 of the amount provided in Section 25987.29.

25 25987.31. (a) On a semiannual basis, the authority shall
26 conduct a meeting ~~for the purpose of to adopt a resolution~~
27 authorizing the issuance of, ~~by the adoption of a resolution,~~
28 negotiable bonds, notes, debentures, or other securities (collectively
29 called “bonds”) for the purposes of generating sufficient moneys
30 to fund the approved applications in the portfolio at the time of
31 the meeting or to repay an outstanding balance of the participant
32 on whose behalf the commission has provided funds through the
33 warehouse line of credit. In anticipation of the sale of bonds as
34 authorized by Section 25987.29, or as may be authorized pursuant
35 to Section 25987.30, the authority, on behalf of the commission,
36 may issue negotiable bond anticipation notes and may renew the
37 notes from time to time. The bond anticipation notes may be paid
38 from the proceeds of sale of the bonds of the authority in
39 anticipation of which they were issued. Notes and agreements
40 relating to the notes and bond anticipation notes (collectively called

1 “notes”) and the resolution or resolutions authorizing the notes
2 may contain any provisions, conditions, or limitations that a bond,
3 agreement relating to the bond, and bond resolution of the authority
4 may contain. However, a note or renewal of the note shall mature
5 at a time not exceeding two years from the date of issue of the
6 original note.

7 (b) Every issue of its bonds, notes, or other obligations shall be
8 general obligations of the authority payable from revenues or
9 moneys received pursuant to this chapter. Notwithstanding that
10 the bonds, notes, or other obligations may be payable from a special
11 fund, they are for all purposes negotiable instruments, subject only
12 to the provisions of the bonds, notes, or other obligations for
13 registration.

14 (c) Subject to the limitations in Sections 25987.29 and 25987.30,
15 the bonds may be issued as serial bonds or as term bonds, or the
16 authority, in its discretion, may issue bonds of both types. The
17 bonds shall be authorized by resolution of the authority and shall
18 bear the date or dates, mature at the time or times, not exceeding
19 30 years from their respective dates, bear interest at the rate or
20 rates, be payable at the time or times, be in the denominations, be
21 in the form, either coupon or registered, carry the registration
22 privileges, be executed in a manner, be payable in lawful money
23 of the United States of America at a place or places, and be subject
24 to terms of redemption, as the resolution or resolutions may
25 provide. The sales may be a public or private sale, and for the price
26 or prices and on the terms and conditions, as the authority shall
27 determine after giving due consideration to the recommendations
28 of any participating party to be assisted from the proceeds of the
29 bonds or notes. Pending preparation of the definitive bonds, the
30 authority may issue interim receipts, certificates, or temporary
31 bonds that shall be exchanged for the definitive bonds. The
32 authority may sell bonds, notes, or other evidence of indebtedness
33 at a price below their par value. However, the discount on a security
34 sold pursuant to this section shall not exceed 6 percent of the par
35 value.

36 (d) A resolution or resolutions authorizing bonds or an issue of
37 bonds may contain provisions that shall be a part of the contract
38 with the holders of the bonds to be authorized, as to all of the
39 following:

1 (1) Pledging the moneys collected pursuant to this chapter from
2 the portfolio of approved applications that are funded by the bonds,
3 to secure the payment of the bonds or of any particular issue of
4 bonds, subject to the agreements with bondholders as may then
5 exist.

6 (2) The setting aside of reserves or sinking funds, and the
7 regulation and disposition of the reserves or sinking funds.

8 (3) Limitations on the right of the authority or the commission
9 or their agent to restrict and regulate the use of the project or
10 projects to be financed out of the proceeds of the bonds or any
11 particular issue of bonds.

12 (4) Limitations on the purpose to which the proceeds of sale of
13 an issue of bonds then or thereafter to be issued may be applied
14 and pledging those proceeds to secure the payment of the bonds
15 or the issue of the bonds.

16 (5) Limitations on the issuance of additional bonds, the terms
17 upon which additional bonds may be issued and secured, and the
18 refunding of outstanding bonds.

19 (6) The procedure, if any, by which the terms of a contract with
20 bondholders may be amended or abrogated, the amount of bonds
21 the holders of which must consent to the amendment or abrogation,
22 and the manner in which that consent may be given.

23 (7) Limitations on expenditures for operating, administrative,
24 or other expenses of the authority or commission.

25 (8) Defining the acts or omissions to act that constitute a default
26 in the duties of the authority or commission to holders of its
27 obligations and providing the rights and remedies of the holders
28 in the event of a default.

29 (e) The authority, the commission, and any person executing
30 the bonds or notes shall not be liable personally on the bonds or
31 notes or be subject to personal liability or accountability by reason
32 of the issuance of the bond or note.

33 (f) The authority shall have power out of any funds available
34 for these purposes to purchase its bonds or notes. The authority
35 may hold, pledge, cancel, or resell those bonds, subject to and in
36 accordance with agreements with bondholders.

37 (g) The commission, the authority, and the board may enter into
38 a memorandum of understanding providing for the transfer of
39 energy remittance payments between the three agencies in
40 furtherance of this chapter.

1 (h) ~~Should there be~~ *If there is* insufficient project valuation or
2 insufficient demand for the revenue bonds authorized by this
3 chapter, the ~~board~~ *loan servicer* shall continue to collect the energy
4 remittance *installment* payments *that become due and payable* and
5 service the loans, *and the board shall continue to collect delinquent*
6 *repayment installments*. Failure to sell the revenue bonds shall not
7 create any liability for the state.

8 25987.32. In the discretion of the authority, any bonds issued
9 under the provisions of this article may be secured by a trust
10 agreement by and between the authority and a corporate trustee
11 or trustees, which may be the authority or any trust company or
12 bank having the powers of a trust company within or without the
13 state. ~~Such~~ *The* trust agreement or the resolution providing for the
14 issuance of ~~such~~ *the* bonds may pledge or assign the revenues to
15 be received pursuant to this chapter, to be financed out of the
16 proceeds of ~~such~~ *the* bonds. ~~Such~~ *The* trust agreement or resolution
17 providing for the issuance of ~~such~~ *the* bonds may contain ~~such~~
18 provisions for protecting and enforcing the rights and remedies of
19 the bondholders as may be reasonable and proper and not in
20 violation of law, including particularly ~~such~~ provisions ~~as have~~
21 ~~herein above been~~ specifically authorized *by this chapter* to be
22 included in any resolution or resolutions of the commission
23 authorizing bonds ~~thereof~~. Any bank or trust company doing
24 business under the laws of this state which may act as depositary
25 of the proceeds of bonds or of revenues or other moneys may
26 furnish ~~such~~ indemnifying bonds or pledge ~~such~~ securities as may
27 be required by the authority. Any ~~such~~ trust agreement may set
28 forth the rights and remedies of the bondholders and of the trustee
29 or trustees, and may restrict the individual right of action by
30 bondholders. In addition to the foregoing, any ~~such~~ trust agreement
31 or resolution may contain ~~such~~ other provisions as the authority
32 may deem reasonable and proper for the security of the
33 bondholders. Notwithstanding any other law, the authority shall
34 not be deemed to have a conflict of interest by reason of acting as
35 trustee pursuant to this chapter.

36 25987.33. Bonds issued under the provisions of this article
37 shall not be deemed to constitute a debt or liability of the state or
38 of any political subdivision thereof, other than the authority, or a
39 pledge of the faith and credit of the state or of any ~~such~~ political
40 subdivision, but shall be payable solely from the funds ~~herein~~

~~provided therefor~~ *provided by this chapter*. All ~~such~~ bonds shall contain on the face thereof a statement to the following effect: “Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this bond.” The issuance of bonds under the provisions of this article shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation ~~whatever therefor~~ or to make any appropriation for their payment. Nothing contained in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit to the payment of bonds or issue of bonds authorized pursuant to this chapter.

25987.34. (a) The authority is hereby authorized to provide for the issuance of bonds of the authority for the purpose of refunding any bonds, notes, or other securities of the authority then outstanding, including the payment of any redemption premium ~~thereon~~ and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of ~~such~~ *the* bonds.

(b) The proceeds of any ~~such~~ bonds issued for the purpose of refunding outstanding bonds, notes, or other securities may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of ~~such~~ outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or retirement at the maturity thereof and may, pending ~~such~~ application, be placed in escrow to be applied to ~~such~~ purchase or retirement at maturity or redemption on ~~such~~ *a* date as may be determined by the authority.

(c) Pending ~~such~~ use, any ~~such~~ escrowed proceeds may be invested and reinvested by the authority in obligations of, or guaranteed by, the United States of America, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States of America, maturing at ~~such~~ *the* time or times as shall be appropriate to ensure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any ~~such~~ investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of ~~such~~ proceeds and interest, income,

1 and profits, if any, earned or realized on the investments ~~thereof~~
2 may be returned to the authority for use by it in any lawful manner.

3 (d) ~~All such~~ *These* bonds shall be subject to the provisions of
4 this division in the same manner and to the same extent as other
5 bonds issued pursuant to this chapter.

6 25987.35. Bonds issued by the authority are legal investments
7 for all trust funds, the funds of all insurance companies, banks,
8 both commercial and savings, trust companies, savings and loan
9 associations, and investment companies, for executors,
10 administrators, trustees, and other fiduciaries, for state school
11 funds, and for any funds which may be invested in county,
12 municipal, or school district bonds, and ~~such~~ *the* bonds are
13 securities which may properly and legally be deposited with, and
14 received by, any state or municipal officer or agency or political
15 subdivision of the state for any purpose for which the deposit of
16 bonds or obligations of the state, is now, or may hereafter be,
17 authorized by law, including deposits to secure public funds if,
18 and only to the extent that, evidence of indebtedness or debt
19 securities of the participating party receiving financing through
20 the issuance of ~~such~~ bonds qualify or are eligible for ~~such~~ *those*
21 purposes and uses.

22 25987.36. The state hereby pledges and agrees with the holders
23 of the bonds and with a participant with an approved application
24 that the state will not limit, alter, restrict, or impair the rights vested
25 in the authority or the commission or the rights or obligations of
26 a person or entity with which the commission contracts to fulfill
27 the terms of an agreement made pursuant to this chapter. The state
28 further agrees that it will not in any way impair the rights or
29 remedies of the holder of the bonds until the bonds have been paid
30 or until adequate provision for payment has been made. The
31 authority may include this provision and undertaking for the
32 authority in its bonds.

33 25987.37. (a) Bonds issued pursuant to this division shall be
34 exempt from all taxation and assessment imposed pursuant to state
35 law.

36 (b) No later than February 1, ~~2014~~, *2015*, the commission shall
37 apply to the United States Department of the Treasury under the
38 Energy Tax Incentives Act of 2005 (Title XIII of Public Law
39 109-58) for the authority to issue tax advantage bonds under the

1 federal Clean Renewable Energy Bonds program or any other
2 applicable programs.

3
4 Article 4. Nonresidential-~~Building~~ *Real Property* Energy
5 Retrofit Debt Servicing Fund
6

7 25987.38. (a) The Nonresidential-~~Building~~ *Real Property*
8 Energy Retrofit Debt Servicing Fund is hereby established in the
9 State Treasury. Notwithstanding Section 13340 of the Government
10 Code, the moneys in the fund are hereby continuously appropriated
11 to the authority without regard to fiscal-year ~~years~~ for the purposes
12 of paying the principal and interest on bonds issued by the authority
13 pursuant to Section 25987.29, servicing the warehouse line of
14 credit, and defraying any direct and indirect costs incurred by the
15 Treasurer in executing duties required by this chapter.

16 (b) All interest and income derived from the deposit and
17 investment of moneys in the fund shall be credited to the fund,
18 and all unexpended and unencumbered moneys in the fund at the
19 end of any fiscal year shall remain in the fund.

20 25987.39. The Loan Loss Reserve Account is hereby
21 established in the Nonresidential-~~Building~~ *Real Property* Energy
22 Retrofit Debt Servicing Fund. The ~~board~~ *commission* shall deposit
23 the portion of the ~~contractual energy remittance repayment~~
24 *installation* that is the loan loss reserve fee into the account.
25 Notwithstanding Section 13340 of the Government Code, the
26 moneys in the account are hereby continuously appropriated to
27 the authority without regard to fiscal-year ~~years~~ for the purposes
28 of paying outstanding balances due under an energy remittance
29 repayment agreement on a building that has been foreclosed upon
30 if the proceeds generated from the foreclosure proceedings are
31 insufficient to pay any past due payments-~~past due~~- under the
32 energy remittance repayment agreement, including accrued interest,
33 ~~penalties~~, *liquidated damages*, and fees. All interest and income
34 derived from the deposit and investment of moneys in the account
35 shall be credited to the account, and all unexpended and
36 unencumbered moneys in the account at the end of any fiscal year
37 shall remain in the account.

38 25987.40. The Administration Account is hereby established
39 in the Nonresidential-~~Building~~ *Real Property* Energy Retrofit Debt
40 Servicing Fund. The ~~authority~~ *commission* shall deposit into the

1 account the program administration fee ~~collected pursuant to~~
2 ~~subdivision (b) of Section 25987.23 and penalties collected~~
3 ~~pursuant to Section 25987.16 and liquidated damages collected~~
4 ~~pursuant to this chapter.~~ Notwithstanding Section 13340 of the
5 Government Code, moneys in the account shall be continuously
6 appropriated *without regard to fiscal years* to the authority, the
7 commission, and the board for the costs of implementing this
8 chapter.

9 ~~25987.41. (a) The Director of Finance shall transfer, as a loan,~~
10 ~~up to one million dollars (\$1,000,000) from the General Fund to~~
11 ~~the board to implement this chapter.~~

12 ~~(b) The Director of Finance shall transfer, as a loan, up to seven~~
13 ~~million dollars (\$7,000,000) from the General Fund to the~~
14 ~~commission to implement this chapter.~~

15 ~~(c) Any loan made pursuant to this section shall be repaid on~~
16 ~~or before January 1, 2024, with interest at the pooled money~~
17 ~~investment rate, from energy remittance repayment collected~~
18 ~~pursuant to this chapter.~~

19 ~~(d) If the fees authorized for collection pursuant to subdivision~~
20 ~~(b) of Section 25987.23 are not sufficient to support the loans made~~
21 ~~pursuant to this section, the Director of Finance shall discuss~~
22 ~~alternative repayment terms with the borrowing agencies.~~

23 ~~25987.42. (a) The commission, the board, and the authority~~
24 ~~shall be authorized to promulgate necessary regulations to~~
25 ~~implement and administer this chapter.~~

26 ~~(b) Guidelines for the purposes of implementing this chapter~~
27 ~~shall be adopted by the commission, board, or authority at a~~
28 ~~publicly noticed meeting offering all interested parties an~~
29 ~~opportunity to comment. For the initial adoption of the guidelines~~
30 ~~and standards, the commission, board, or authority shall provide~~
31 ~~a written public notice at least 30 days prior to the meeting. For~~
32 ~~the adoption of any substantive change to the guidelines and~~
33 ~~standards, the commission, board, or authority shall provide a~~
34 ~~written public notice at least 10 days prior to the meeting.~~
35 ~~Notwithstanding any other law, guidelines or standards adopted~~
36 ~~pursuant to this section shall be exempt from the requirements of~~
37 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~
38 ~~3 of Title 2 of the Government Code.~~

O